Chris Doyle
What Happens Next – 06.12.2022

Larry Bernstein:
Some of our listeners live in high state tax jurisdictions and aspire to relocate to low-tax jurisdictions. Today, we will meet with Chris Doyle who is a tax partner at the Hodgson Russ law firm and he will explain the theory and practice of changing your tax residency.

Chris Doyle:
There are a lot of wealthy individuals concentrated in the New York City who don't like to pay taxes. The fine line that they need to walk is what if they've got some living arrangement in New York and spend a significant amount of time there but don't want to pay New York taxes?

In the last five years demand for our services has been fueled by three factors. One is increases in state and local income taxes, particularly on the wealthy. The progressive movement has fueled the increase of high-income taxes on the uber wealthy. I wouldn't deny that states need revenue to perform services that we expect, but the burden for that has increasingly been visited upon the wealthy and the uber wealthy.

The second was the Federal Tax and Jobs Act which curtailed the Federal tax deduction for state and local taxes so that only $10,000 of those taxes could be deducted each year that took away a federal tax subsidy.

The third was COVID. COVID has been a life changing event for many people. Individuals wanting to accelerate their moves from high to low tax jurisdictions. If you can live anywhere, why would you want to live in a place where you have to pay the most taxes?

Larry Bernstein:
Some taxpayers live and work in different states. Which state receives the income taxes on wage income?

Chris Doyle:
The US Federal Constitution permits state governments to tax businesses and individuals on services performed. The due process clause and the interstate commerce clause of the Federal Constitution require that taxes be fairly apportioned.

For individual taxpayers the resident state is required to give a credit in the home state for taxes paid to the other states in which the income is earned. So, individual taxpayers pay tax on everything but get a credit from the other state in which tax is paid on earned income.

Larry Bernstein:
Let’s move onto professional athletes like Derek Jeter who worked for the NY Yankees but live in Florida and play games all over the US. Where does Jeter pay his state income taxes?

Chris Doyle:
Derek Jeter had a residency case in New York State. He was very careful to maintain his Florida tax residency, even as a non-resident of New York, he is required to pay tax to New York on the amount of his compensation that was earned in New York. New York State does that based on a duty-days concept. The days that you spend in New York for mandatory mini camps, game days, practice days are duty days and if you spend those in New York, then you'll have to allocate your salary to New York based on your duty days in New York versus total duty days.

The only New York football team is the Buffalo Bills, and one of the reasons that there will never be a Super Bowl in New York is because of taxes. Most of the time they go to Vegas, Florida, or Texas, all states which do not have income taxes.

Larry Bernstein:
That's funny, I thought the reason they chose the Super Bowl location was due to the weather, and the worst possible place in January to host the Super Bowl would be in Buffalo.

New topic: God forbid, is it possible that a taxpayer could be required to pay state income taxes in two different states on the same income?

Chris Doyle:
Well, if Connecticut is your domicile, you are a tax resident of Connecticut. If you've got a pied-à-terre in New York State, you could be taxed in New York as a resident if you couple that with 183 days or more in New York.

And for purposes of that 183-day rule, any part of a day is a day. So, if you live in Stamford, Connecticut, and go shopping in New York, having nothing to do with your residence in New York, you just go grocery shopping there, that is a day in New York, even if you're only there for 90 minutes to go shopping.

You're taxed as a resident on all of your worldwide income by both states. And you'd only get a credit in both of those resident states for income earned in New York. for a dual state resident status, you'd be taxed on all of the investment income, the un-earned income, in both states, but only one of the states would be taxing your earned income, because both resident states will give you a credit for the taxes paid in the other state on earnings from the other state.

Larry Bernstein:
Clarifying, your wage income would be taxed only in one state, but your capital gains would be taxed in both states?

Chris Doyle:
Yes.

Larry Bernstein:
You mentioned this concept of a residence test and a domicile test. Could you explain what those terms mean?

Chris Doyle:
A domicile is where, in your heart, you feel your home is, and New York's approach is followed in many different states that very subjective determination using five objective factors: relative time in the state; business connections in the state; location of close family; location of what are called near and dear items; and the final factor is the relative value in use of the homes that you have in both states. Those factors are compared and weighed and a finder of fact will then use those factors to determine whether or not your home is in state A or state B.

The easier determination is, assuming you're a domiciliary of state B, state A can still tax you as a resident if you are a resident under the statute. New York's rule is that permanent place of abode plus more than 183 days in the state. And if those two facts are met, then the bright line rule is you're a resident of New York regardless of whether you're a domiciliary of another state.

Larry Bernstein:
Going back to the Derek Jeter case. He did an advertising campaign for NYC, and the advertisement had Deter saying that his heart was in NYC, and Deter ended up losing his tax domicile case because of that Ad!

A number of our listeners have a place in the Hamptons and a home in NYC. During COVID, they spent most of their time outside the city. Do these Hampton residents still have to pay NYC taxes?

Chris Doyle:
New York City has the same residency rule as New York State, so if you're a domicile in the city, you pay tax there. If you've got a place to live in New York City and are there more than 183 days, then you're a statutory resident of New York City.

Larry Bernstein:
If you live in Larchmont, you commute daily on the Metro-North and work in midtown and you go home at night. You don't have a New York City residence tax. You only pay New York State taxes on your income.

Chris Doyle:
Yes, that's exactly right.

Larry Bernstein:
Now what about the poor guy who has a mansion in East Hampton as well as a penthouse apartment in the city. Is the question, where is his heart and mind? Is it in the Hamptons or is it in the city? Or alternatively, is he spending more than 183 days in the city?

Chris Doyle:
The heart and mind test would go into the calculus to determine whether a person was a New York City domiciliary.

Larry Bernstein:
So, the poor guy has two kids in private school in New York City. And they're spending as many days as they can in the Hamptons, and so they end up spending only 170 days in New York City with those kids at school using remote learning situation like during COVID. Would that be sufficient to get out of New York City?

Chris Doyle:
One of the procedural rules we deal with is the burden of proving is on the person asserting that residency has changed. So, if the person that you described had always lived in the Hamptons, and they spent all of their holidays, family gatherings and every weekend in the Hamptons, and that it was only work and the children's education that brought them into New York City; I would say the burden would be on New York City to prove that the taxpayer is a domiciliary of New York City.

If you told me, however, that the taxpayer you've described had after college, started work, only had an apartment in New York City, lived in New York City for 20 years and then, after they became successful, bought a house out in the Hamptons, and is now trying to establish not being a New York City resident, even after having admitted to being a New York City domiciliary, then the burden of proof would be on the taxpayer. And I would say 90% of these cases are determined based on who bears the burden of proof.

And if the state bears the burden of proof, it's very difficult for the state to withstand that standard. If the taxpayer bears the burden of proof, they control all the facts, so it's a little easier. But it is often the case where the burden of proof is outcome determining.

Larry Bernstein:
Let's change the facts. Let's imagine that you used to have two kids in NYC private schools, and now they go to college. And they're no longer with you. It's just the husband and wife, and they've made the decision to effectively change the way they live. And now they're spending, 200 odd days out in the Hamptons and 100 days in New York City and 65 days outside of NY.

At what point will their behavior be sufficient to get out, even if they have the burden of proof. How can they prove to NYC that they've abandoned their city domiciliary?

Chris Doyle:
It's totally a facts and circumstances test, and they will weigh those five factors I described previously. Auditors like to see two days in your domicile location for every one day that you are in your non domicile location that seems to be a good indicator that you're no longer a domiciliary of New York City.

It would help if one of the spouses had a business connection in the Hamptons that all of the business connections are not in New York City. It would help if when the kids come home, they're coming home to the Hamptons and not to New York City. It would help if all of the major family holidays are spent in the Hamptons.

If you've got artwork, a car collection, you'd want that near your home, and it would be better for that to be in the Hamptons than in New York City.

Larry Bernstein:
Many listeners would prefer to move to Miami than the Hamptons so that they pay zero state income taxes. What are the necessary steps for a taxpayer to prepare?

Chris Doyle:
I would do all the things I mentioned for the New York City versus Hamptons for the New York City versus Florida taxpayer. I might want to see an event that triggers when domicile ended in New York City. So, having a van move your really treasured items from New York City to Florida. I would want you to track your days using an app, so that it was clear where you were every minute of every day during the year.

I would want the person to spend two days in Florida for every day in New York City. I would encourage the person to be more active in social charitable endeavors in Florida than they are in New York City. I would think that consistent with Florida being the domicile, birthdays, holidays would be in Florida and not in New York City.

I think the best approach is the more abrupt event. It's better to have a major lifestyle change when you're asserting that you've moved that makes the auditors more comfortable that you moved out of New York.

In the year that you move to Florida, you actually buy a big place that is equally or more luxurious than the place that you have to live in New York State. And you move all your stuff down there and you change your driver's licenses and the registration on your vehicles and all the other sort of paperwork, details. You could keep your New York place.

That is a much more comfortable place for an auditor than this creeping domiciled situation.

Larry Bernstein:
This state versus state taxation seems crazy to me. The founders never contemplated taxpayers living in multiple states. What is the long-term solution to this problem?

Chris Doyle:
If I were king for a day, I would have congress pass a law that had a bright-line rule that applied to all states. Under the Interstate Commerce Clause, congress has the exclusive authority to govern commerce among the states.

The problem is there are 50 states. They all have what they think is the right way to do things and it is difficult to get all of the states to do anything the same way.

Larry Bernstein:
The state income tax audit letter arrives in the mail, and you say Good God why didn't I keep my records. What should taxpayers from multiple states be doing to get prepared?

Chris Doyle:
There are apps available now that you can download on your phone that keep track of where your phone is. I think that that's a good idea. I think having something as simple as an Excel spreadsheet where you keep track of your whereabouts. If you're prepared for it, it shouldn't be horrible.

Reproducing the records three years after the fact can be difficult and invasive. It doesn't happen very often, but every once in a while, you know somebody swears up and down, "I don't have a place in New York City," and it turns out the girlfriend has a place in New York City that the spouse doesn't know about, and (laughs) and all of a sudden New York State finds out about that and then what do you do? The answer is you just pay.

Larry Bernstein:
There is a special tax for being a sugar daddy.